

10/501-360

DT03 Rec'd PCT/PTO 06 DEC 2004

Practitioner's Docket No. U 015302-3

CHAPTER II

IN THE UNITED STATES ELECTED OFFICE (EO/US)

INTERNATIONAL APPLICATION NO. PCT/ES03/00063	INTERNATIONAL FILING DATE 3 FEBRUARY 2003	PRIORITY DATE CLAIMED 4 FEBRUARY 2002
TITLE OF INVENTION METHOD OF PRODUCTION OF ASTAXANTHIN BY FERMENTATION OF SELECTED STRAINS OF <i>XANTHOPHYLLOMYCES DENDRORHOUS</i>		
APPLICANT(S)		
1. ANA TERESA MARCOS RODRÍGUEZ	8. BRUNO DIEZ GARCIA	
2. ANTONIO ESTRELLA DE CASTRO	9. ENRIQUE PEIRO CEZON	
3. JAVIER COSTA PEREZ	10. ANGEL MUÑOZ RUIZ	
4. MANUEL ANTONIO OLIVER RUIZ	11. WALTER CABRI	
5. NIEVES FRAILE YECORA	12. JOSÉ LUIS LOPEZ ORTIZ	
6. JUAN LUIS DE LA FUENTE MORENO	13. JOSÉ LUIS BARREDO FUENTE	
7. MARTA RODRÍGUEZ SAIZ		

Mail Stop PCT  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

ATTENTION: EO/US

COMPLETION OF FILING REQUIREMENTS  
FOR INTERNATIONAL APPLICATION ENTERING U.S. NATIONAL STAGE  
IN U.S. ELECTED OFFICE (EO/US) UNDER 35 U.S.C. § 371

(check and complete the applicable item, if applicable)

- ☒ This replies to the Notice of Missing Requirements under 35 U.S.C. § 371 and 37 C.F.R. § 1.495 (FORM PCT/DO/EO/905).
- ☒ A copy of FORM PCT/DO/EO/905 accompanies this response.

CERTIFICATION UNDER 37 C.F.R. 1.10\*

(Express Mail label number is **mandatory**.)

(Express Mail certification is **optional**.)

I hereby certify that this Completion of Filing Requirements and the papers indicated as being transmitted therewith are being deposited with the United States Postal Service on this date December 6, 2004, in an envelope as "Express Mail Post Office to Addressee," Mailing Label Number EV 481671778 US, addressed to the Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

Connie Yannoti  
(type or print name of person mailing paper)

Signature of person mailing paper

**WARNING:** Certificate of mailing (first class) or facsimile transmission procedures of 37 C.F.R. 1.8 cannot be used to obtain a date of mailing or transmission for this correspondence.

**\*WARNING:** Each paper or fee filed by "Express Mail" **must** have the number of the "Express Mail" mailing label placed thereon prior to mailing. 37 C.F.R. 1.10(b).  
"Since the filing of correspondence under § 1.10 without the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will **not** be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.

**WARNING:** *Where the items being submitted to complete the entry of the international application into the national phase are subsequent to 30 months from the priority date the application is still considered to be in the international state and if mailing procedures are utilized to obtain a date the express mail procedure of 37 C.F.R. § 1.10 must be used (because international application papers are not covered by an ordinary certificate of mailing. 37 C.F.R. § 108(2)(xi).*

**NOTE:** *Documents and fees must be clearly identified as a submission to enter the national stage under 35 U.S.C. § 371. Otherwise, the submission will be considered as being made under 35 U.S.C. § 111. 37 C.F.R. § 1.495(g).*

## DECLARATION OR OATH

**NOTE:** *37 C.F.R. § 1.495(c): "If applicant complies with paragraph (b) of this section before expiration of thirty months from the priority date but omits . . . the oath or declaration of the inventor (35 U.S.C. 371(c)(4) and § 1.497), if a declaration of inventorship in compliance with § 1.497 has not been previously submitted in the international application under PCT Rule 4.17 (iv) within the time limits provided for in PCT Rule 26ter.1, applicant will be so notified and given a period of time within which to file the . . . oath or declaration in order to prevent abandonment of the application . . . . The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of **thirty** months after the priority date."*

I. (a) ☒ No original declaration or oath was filed. Enclosed is the original declaration or oath for this application.

OR

(b) ☐ The declaration or oath that was filed was determined to be defective. A new original oath or declaration is attached.

**NOTE:** *For surcharge fee for filing declaration after filing date complete item IV(3)*

**NOTE:** *NOTE: Acceptable minimums in the declaration in an ordinarily filed U.S. application for identification of the specification to which it applies are:*

- (A) application number (consisting of the series code and the serial number, e.g., 08/123,456);*
- (B) serial number and filing date;*
- (C) attorney docket number which was on the specification as filed;*
- (D) title which was on the specification as filed and reference to an attached specification which is both attached to the oath or declaration at the time of execution and submitted with the oath or declaration; or*
- (E) title which was on the specification as filed and accompanied by a cover letter accurately identifying the application for which it was intended by either the application number (consisting of the series code and the serial number, e.g., 08/123,456), or serial number and filing date. Absent any statement(s) to the contrary, it will be presumed that the application filed in the PTO is the application which the inventor(s) executed by signing the oath or declaration.*

*M.P.E.P. § 602, 8<sup>th</sup> ed.*

**NOTE:** *Another minimum found acceptable in the declaration is the filing date (i.e., date of express mail) and the express mail number, useful where the serial number is not yet known. But note the practice where the express mail deposit is a Saturday, Sunday or holiday within the District of Columbia. 37 C.F.R. § 1.10(c).*

**NOTE:** *See 37 C.F.R. § 1.41(a).*

*(complete as applicable)*

Attached is a

- (a) ☐ Statement by practitioner that papers attached to declaration are a copy of those filed in PTO to get a filing date
- (b) ☐ Statement that substitute specification contains no new matter.
- (c) ☒ Preliminary Amendment
- (d) ☐ Submission of "Sequence Listing," computer readable copy, and/or amendment pertaining thereto for biotechnology invention containing nucleotide and/or amino acid sequence

**TRANSMITTAL OF ENGLISH TRANSLATION  
OF NON-ENGLISH LANGUAGE PAPERS**

- II. ☐ Submitted herewith is an English translation of the non-English language international application papers as originally filed. It is requested that this translation be used as the copy for examination purposes in the PTO. (See 37 C.F.R. 1.495(c))

NOTE: For fee for processing a non-English application, complete item IV(4).

NOTE: A non-English oath or declaration in the form provided or approved by the PTO need not be translated. 37 C.F.R. § 1.69(b).

**FEES**

III.

NOTE: See 37 C.F.R. § 1.28(a).

1. Fees for claims

- ☐ each independent claim in excess of 3  
(37 C.F.R. § 1.492(b))—\$88.00; small entity—\$44.00 \$ \_\_\_\_\_
- ☒ each claim in excess of 20  
(37 C.F.R. § 1.492(c))—\$18.00; small entity—\$9.00 \$ 126.00
- ☐ multiple dependent claims(s)  
(37 C.F.R. § 1.492(d))—\$300.00; small entity—\$150.00 \$ \_\_\_\_\_

2. Surcharge fees

- ☒ surcharge set forth in 37 C.F.R. § 1.492(e) for accepting the declaration later than 30 months after the priority date in filing an application in the U.S. as a designated office—\$130.00; small entity—\$65.00 \$ 130.00

NOTE: The processing fee in the next item 3 below is not subject to a reduction for small entity status.

12/09/2004 GFREY1 00000076 10501364

01 FC:1617  
02 FC:1615

130.00 OP  
126.00 OP

3. ☐ processing fee set forth in 37 C.F.R. § 1.492(f)  
for acceptance of an English translation later  
than 30 months after the priority date—\$130.00 \$ \_\_\_\_\_
- Total Fees** \$ 256.00

#### SMALL ENTITY STATUS

- IV. a. ☐ A Statement or Written Assertion that this filing is by a small entity

NOTE: See 37 C.F.R. § 1.28(a).

*(check and complete applicable items)*

- ☐ is attached.  
☐ was filed on \_\_\_\_\_.  
☐ was made by paying the basic national fee as a small entity.
- b. ☐ A separate refund request accompanies this paper.

#### EXTENSION OF TIME

*(complete (a) or (b), as applicable)*

#### V.

The proceedings herein are for a patent application. Accordingly, the provisions of 37 C.F.R. § 1.136(a) apply.

- (a) ☐ Applicant petitions for an extension of time, the fees for which are set out in 37 C.F.R. § 1.17(a)(1)-(4), for the total number of months checked out below:

	<u>Extension (months)</u>	<u>Fee for other than small entity</u>	<u>Fee for small entity</u>
<input type="checkbox"/>	one month	\$ 110.00	\$ 55.00
<input type="checkbox"/>	two months	\$ 430.00	\$ 215.00
<input type="checkbox"/>	three months	\$ 980.00	\$ 490.00
<input type="checkbox"/>	four months	\$ 1,530.00	\$ 765.00
<b>NOTE:</b> The 2-month time period for reply to A Notice to File Missing Parts of an Application is not identified on the Notice as a statutory period subject to 35 U.S.C. 133. Thus, extensions of time of up to 5 months under 37 CFR 1.136(a), followed by additional time under 37 CFR 1.136(b), when appropriate, are permitted. MPEP 710.02(d)(c), 8 <sup>th</sup> ed.			
<input type="checkbox"/>	five months	\$ 2,080.00	\$ 1,040.00

Fee: \$ \_\_\_\_\_

If an additional extension of time is required, please consider this a petition therefor.

*(check and complete the next item, if applicable)*

- ☐ An extension for \_\_\_\_\_ months has already been secured. The fee paid therefor of \$ \_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ \_\_\_\_\_

or

- (b) ☒ Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

#### **TOTAL FEE DUE**

#### **VI.**

The total fee due is:

Completion fee(s) \$ 256.00  
Extension fee (if any) \$ \_\_\_\_\_  
TOTAL FEE DUE \$ 256.00

#### **PAYMENT OF FEES**

#### **VII.**

- ☒ Enclosed is a check in the amount of \$ 256.00  
☐ Charge Account No. 12-0425 in the amount of \$ \_\_\_\_\_  
☐ A duplicate of this request is attached.

*NOTE: Fees should be itemized in such a manner that it is clear for which purpose the fees are paid. 37 C.F.R. § 1.22(b).*

#### **AUTHORIZATION TO CHARGE ADDITIONAL FEES**

#### **VIII.**

**WARNING:** *Accurately count claims, especially multiple dependent claims, to avoid unexpected high charges if extra claims are authorized.*

**NOTE:** *"A written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission." 37 C.F.R. § 1.136(a)(3).*

**NOTE:** *"Amounts of twenty-five dollars or less will not be returned unless specifically requested within a reasonable time, nor will the payer be notified of such amounts; amounts over twenty-five dollars may be returned by check or, if requested, by credit to a deposit account." 37 C.F.R. § 1.26(a).*

☒ The Commissioner is hereby authorized to charge the following additional fees that may be required by this paper and during the entire pendency of this application to Account No. 12-0425

- ☒ 37 C.F.R. § 1.492(a)(1), 1.492(a)(4) (filing fees)  
☐ 37 C.F.R. § 1.492(b), (c), and (d) (presentation of extra claims)

**NOTE:** *Because additional fees for excess or multiple dependent claims not paid on filing or on later presentation must only be paid or these claims cancelled by amendment prior to the expiration of the time period set for response by the PTO in any notice of fee deficiency (37 C.F.R. § 1.16(d)), it might be best not to authorize the PTO to charge additional claim fees, except possibly when dealing with amendments after final action.*

- ☒ 37 C.F.R. § 1.17 (application processing fees)  
☒ 37 C.F.R. § 1.17(a)(1)-(5)(extension fees pursuant to § 1.136(a)).

**NOTE:** *Section 1.311(b) provides that an authorization to charge the issue fee (§ 1.18) to a deposit account may be filed in an individual application **only after the mailing of the notice of allowance**. Accordingly, general authorizations to any fees and specific authorizations to pay the issue fee that are filed prior to the mailing of a notice of allowance will generally not be treated as requesting payment of the issue fee and will not be given effect to act as a reply to the notice of allowance. Applicant, when paying the issue fee, should submit a new authorization to charge fees, such as by completing box 6b on the current PTOL 85-B form. Where no reply to the notice of allowance is received, the application will stand abandoned notwithstanding the presence of general authorizations to pay fees or a specific authorization to pay the issue fee that were submitted prior to mailing of the notice of allowance. Where an attempt is made to pay the issue fee but an incorrect amount is submitted, § 1.311(b)(1), or where the Office's issue fee transmittal form (currently PTOL-85(B)) is completed by applicant and submitted, § 1.311(b)(2), in reply to a notice of allowance, an exception will be made. Such submissions will operate as a request to charge the issue fee to any deposit account identified in a previously filed (i.e., submitted prior to the mailing of the notice of allowance) authorization to charge fees, and will be allowed to act as payment of the correct issue fee. § 1.311(b). See also the change to § 1.26(b), Notice of September 8, 2000, Fed. Reg. 54603-54683, at 54646 and 54647.*

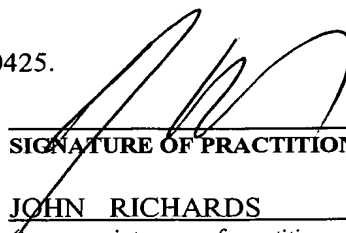
- ☒ 37 C.F.R. § 1.492(e) and/or (f) surcharge fees for filing the declaration and/or an English translation of an international application later than 30 months from the earliest-claimed priority date.

**WARNING:** *It would be wise to always check this last authorization.*

Refund any overpayment to deposit account 12-0425.

Reg. No.: 31,053

Tel. No.: (212)708-1915

  
SIGNATURE OF PRACTITIONER

JOHN RICHARDS  
(type or print name of practitioner)

P.O. Address

c/o Ladas & Parry LLP  
26 West 61<sup>st</sup> Street  
New York, N.Y. 10023

Customer No.:



00140

PATENT TRADEMARK OFFICE

## CHAPTER II

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Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

ATTENTION: EO/US

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**CERTIFICATION UNDER 37 C.F.R. 1.10\***

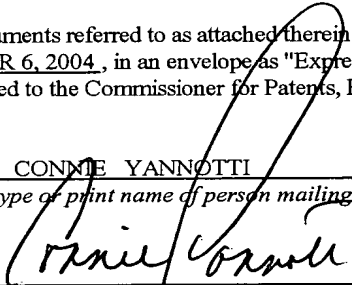
*(Express Mail label number is **mandatory**.)*

*(Express Mail certification is optional.)*

I hereby certify that this correspondence and the documents referred to as attached therein are being deposited with the United States Postal Service on this date DECEMBER 6, 2004, in an envelope as "Express Mail Post Office to Addressee", mailing Label Number EV 481671778 US, addressed to the Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

CONNIE YANNOTTI

*(type or print name of person mailing paper)*

  
Signature of person mailing paper

**WARNING:** Certificate of mailing (first class) or facsimile transmission procedures of 37 C.F.R. 1.8 cannot be used to obtain a date of mailing or transmission for this correspondence.

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(Assignment (Document) Cover Sheet—page 1 of 3) 13-21



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
 www.uspto.gov

U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/501,364	Ana Teresa Marcos Rodriguez	U 015302-5

INTERNATIONAL APPLICATION NO.
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PCT/ES03/00063

I.A. FILING DATE	PRIORITY DATE
02/03/2003	02/04/2002

00140  
 LADAS & PARRY  
 26 WEST 61ST STREET  
 NEW YORK, NY 10023

**RECEIVED**

OCT 15 2004

**L & P****CONFIRMATION NO. 7575****371 FORMALITIES LETTER**

\*OC000000014020044\*

Date Mailed: 10/07/2004

### NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)

The following items have been submitted by the applicant or the IB to the United States Patent and Trademark Office as a Designated / Elected Office (37 CFR 1.495).

- Copy of the International Application filed on 07/14/2004
- Copy of the International Search Report filed on 07/14/2004
- Copy of IPE Report filed on 07/14/2004
- Preliminary Amendments filed on 07/14/2004
- Information Disclosure Statements filed on 07/14/2004
- Request for Immediate Examination filed on 07/14/2004
- U.S. Basic National Fees filed on 07/14/2004

The applicant needs to satisfy supplemental fees problems indicated below.

The following items **MUST** be furnished within the period set forth below in order to complete the requirements for acceptance under 35 U.S.C. 371:

- Additional claim fees of **\$126** as a non-small entity, including any required multiple dependent claim fee, are required. Applicant must submit the additional claim fees or cancel the additional claims for which fees are due.
- Oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date.
- **\$130** Surcharge for providing the oath or declaration later than 30 months from the priority date (37 CFR 1.492(e)) is required.

#### SUMMARY OF FEES DUE:

Total additional fees required for this application is **\$256** for a Large Entity:



- **\$130** Late oath or declaration Surcharge.
- Total additional claim fee(s) for this application is \$ **126**
  - **\$126** for 7 total claims over 20.

**ALL OF THE ITEMS SET FORTH ABOVE MUST BE SUBMITTED WITHIN TWO (2) MONTHS FROM THE DATE OF THIS NOTICE OR BY 32 MONTHS FROM THE PRIORITY DATE FOR THE APPLICATION, WHICHEVER IS LATER. FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.**

The time period set above may be extended by filing a petition and fee for extension of time under the provisions of 37 CFR 1.136(a).

Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

*A copy of this notice **MUST** be returned with the response.*

LAMONT M HUNTER

Telephone: (703) 305-3686

**PART 1 - ATTORNEY/APPLICANT COPY**

U.S. APPLICATION NUMBER NO.	INTERNATIONAL APPLICATION NO.	ATTY. DOCKET NO.
10/501,364	PCT/ES03/00063	U 015302-5